Supreme Court, U.S.
FILED
MAR 17 1988
JOSEPH F. SPANIOL, JR.
CLERK

(3)

NO. 87-1407

IN THE
SUPREME COURT OF THE UNITED STATES

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October Term, 1987

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City of Philadelphia and Commissioner, Philadelphia Department of Public Property,

Petitioners,

v.

Disabled in Action of Pennsylvania, et al.,

Respondents.

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# RESPONDENTS' SUPPLEMENTAL BRIEF

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On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

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City of Philadelphia and Commissioner, Philadelphia Department of Public Property,

Petitioners

v.

Disabled in Action of Pennsylvania, on behalf of its members and Hugh Young, John De Angelo, James Falls, Michael Lohr, Dena Scott; Walter Place, Stephen Margolis, Joyce Brock, and Wendy Elliot-Vandiver, on behalf of themselves and all others similarly situated,

Respondents.

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On Petition for Writ of Certiorari
to the United States Court of Appeals
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## RESPONDENTS' SUPPLEMENTAL BRIEF

On February 20, 1988, petitioners, City of Philadelphia, et al. filed a Petition for a Writ of Certiorari in the above case. On March 8, 1988, respondents filed their Brief in Opposition to the granting of a Writ of Certiorari.

The attached letter from the United States Architectural and Transportation Barriers Compliance Board was sent to the City of Philadelphia and counsel for Petitioners on February 8, 1988. Respondents received a copy on March 8, 1988 -- after we had mailed our Brief.

Pursuant to Rule 22.6 of the Supreme Court Rules, please consider the February 8, 1988 letter to the City of Philadelphia an "intervening matter not available at the time of the

[respondents'] last filing." On page seven of the attached February 8, 1988 letter, the Columbia Avenue subway station was cited for violating accessibility standards.

ACCESS
AMERICA

United States Architectural and
Transportation Barriers Compliance Board
Washington, D.C. 20202

Feb. 8, 1988

Mr. Robert C. Belfi
Director of Architecture and
Engineering Division
Department of Public Property,
City of Philadelphia
Municipal Services Building, Rm. 1080
Philadelphia, PA 19102

Certified Mail
Return Receipt Requested

Re: Complaint #86-0040.
Location: Phila., Pa.

Dear Mr. Belfi:

The Architectural and Transportation Barriers Compliance Board (ATBCB) has completed its site visit to update the file on the above referenced complaint and compared its findings with the appropriate Architectural Barriers Act accessibility standards.

The following violations exist in the stations listed below for which the City of Philadelphia was the grantee of Federal funds:

I. Spring Garden

The standard applicable to this station is ANSI A117.1-1961 (R1971). (Hereinafter "ANSI").

1. No. accessible entrance (i.e., elevator) is provided as required by ANSI 5.2.1.

2. The absence of an accessible exit gate to allow the passage of a handicapped person from the "paid" to the "unpaid" areas of the station is a further violation of ANSI 5.2.1.

3. The pay telephone on the platform was 55" high, in violation of ANSI 5.8.1.

4. The station attendant's booth door is only 23" wide in violation of ANSI 5.3.1. and has a 6" doorsill in violation of ANSI 5.3.3.

In addition, while it is not a violation of the standard, the location of the emergency call box 57" from the ground and out of reach of a person in a wheelchair presents a potentially hazardous situation.

II. 2nd St.

The standard applicable to this station is ANSI A117.1-1961 (R1971).

1. No accessible entrance (i.e., elevator) is provided as required by ANSI 5.2.1.

2. The mezzanine level has a two step up then two-step down change in level to cross the overpass to change platforms. This violates ANSI 5.5.2.

3. The pay telephone on the platform was 62" high, in violation of ANSI 5.8.1.

4. The station attendant's booth door is only 23" wide in violation of ANSI 5.3.1. and has a 6" doorsill in violation of ANSI 5.3.3.

In addition, while they are not violations of the standard, the location of the emergency call box 52" from the ground and the fire alarm 65" from the ground out of reach of a person in a wheelchair presents a potentially hazardous situation.

III. 8th /Market

The standard applicable to this station is ANSI A117.1-1961 (R1971).

1. No accessible entrance (i.e., elevator) is provided as required by ANSI 5.2.1.

2. The mezzanine level has a two step then two-step down change in level to cross the overpass to change platforms. This violates ANSI 5.5.2.

3. The pay telephone on the platform was 67" high, in violation of ANSI 5.8.1.

4. The station attendant's booth door is only 28" wide in violation of ANSI 5.3.1. and has a 6" doorsill in violation of ANSI 5.3.3.

5. By visual inspection, the ramp from the platform to the concourse level on the Eastbound side does not comply with ANSI 5.1.1.

6. Handrails at the bottom stairs did not extend 18" beyond the bottom of the bottom step as required by ANSI 5.4.3.

In addition, while it is not a violation of the standard, the location of the fire alarm 65" from the ground out of reach of a person in a wheelchair presents a potentially hazardous situation.

IV. Columbia

The standard applicable to this station is the GSA Accessibility Standard which was in effect from October 14, 1980 to July 30, 1984. (Hereinafter "GSA").

1. No elevator was provided to either platform in violation of GSA 5.9.1. which provides that all levels of a building be made accessible by elevator meeting specified requirements.

2. The doorway to the station attendant's booth is 27" wide in violation of GSA 5.3.1. and threshold of 7" in violation of GSA 5.3.2.

In addition, while it is not a violation of the standard, the location of the emergency call button 55.5" from the ground out of reach of a person in a wheelchair presents a potentially hazardous situation.

V. Pattison Avenue

Although Pattison Avenue had no Federal grants earmarked specifically for it, an attendant's booth purchased for 2nd St. station under an UMTA grant to the City (PA-03-0036) was transferred to Pattison Avenue. Each of the three attendant's booths at Pattison Ave. violates ANSI 5.3.1. regarding door width and has a doorsill in violation of ANSI 5.3.3.

If you have any questions about any of these items, please call me at (202) 245-1801. Please respond in writing within thirty (30) days of receipt of this letter with a timetable for corrective action. We would be pleased to offer technical assistance with respect to any of the listed items.

Sincerely,

/s/

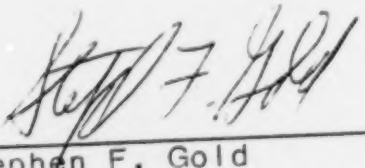
Margaret Milner
Executive Director

cc: Mr. Matthew Scocozza
Mr. Ira Laster
Ms. Susan Shinkman, Esq.
Mr. Peter N. Stowell
Ms. Nancy Green, Esq.
Mr. T.E. Margro

## CONCLUSION

The attached letter is an intervening matter that supports denial of the Petition for Writ of Certiorari.

Respectfully submitted,



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Counsel for Respondents

March 16, 1988